

Hon. Marsha Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICK CALLIARI, individually and
as Representative of the Former
Shareholders of GCI Investments Inc., a
Washington corporation,

Plaintiff,

v.

SARGENTO FOODS INC.,

Defendant/
Counterclaim
Plaintiff,

v.

PATRICK C. CALLIARI, FLORA
DAMASIO, ANTOINNE IOANNIDES,
ANDREAS IOANNIDES, GAYLE K.
GOODRICH, GILLIAN OLSON,
RICHARD J. OLSON, and BETTY
CROUSE,

Counterclaim
Defendants.

No. 2:08-CV-1111MJP
(Consolidated with 2:08-CV-1112MJP)

DECLARATION OF MIKE GORDY
IN OPPOSITION TO COUNTER-
CLAIM DEFENDANTS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT AS TO PLAINTIFF'S
COUNTERCLAIM AND IN SUPPORT
OF SARGENTO'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
RE REBUTTABLE PRESUMPTION

I, MIKE GORDY, declare under penalty of perjury that the following statements
are to the best of my knowledge true and correct:

1 1. I am currently the President of the Food Ingredient Group of Sargento
2 Foods Inc., based in Plymouth, Wisconsin. If called to testify, I could and would testify to
3 the facts stated herein.

4 2. Portionables is a food manufacturer based in Bellingham, Washington.
5 Portionables manufactures frozen sauce pellets at its two production facilities—one
6 located in Bellingham, and the other in North Sioux City, South Dakota. The sauce
7 pellets are typically incorporated into other food products. For example, the Alfredo
8 sauce in Bertolli brand frozen pasta products is made by Portionables in Bellingham and
9 sold to Unilever, which owns the Bertolli brand.

10 3. Sargento is a family owned company based in Plymouth, Wisconsin.
11 Sargento is a manufacturer of premium quality cheeses and other food products. Prior to
12 2007, Sargento had explored the possibility of expanding its product line to include frozen
13 sauces. It identified Portionables as a possible acquisition target to facilitate Sargento's
14 entry into the frozen sauce market. Sometime in December 2006, executives at Sargento
15 contacted Portionables about buying the company. Negotiations ensued.

16 4. Following Sargento's acquisition of Portionables, Patrick Calliari remained
17 President of Portionables and, pursuant to the parties' Stock Purchase Agreement
18 ("SPA"), Calliari was to remain in operational control of Portionables subject to certain
19 limitations set forth in the SPA. Under the SPA, if Calliari and Sargento found
20 themselves in a dispute over the operation of Portionables, the parties could submit the
21 dispute to mediation before a neutral third-party mediator, who would issue written
22 recommendations to the parties if they were unable to resolve the dispute during
23 mediation.

24 5. When disputes regarding Calliari's operational control surfaced, the parties
25 engaged The Hon. James E. Sullivan (Ret.), a former judge in Illinois, to conduct the
26 mediation. The mediator took written submissions from Sargento and Calliari and held an

1 in-person mediation in Chicago on May 21, 2008. The issues presented to Judge Sullivan
2 by the parties included the following: (1) Calliari's exclusion from Unilever contract
3 negotiations, (2) Sargento's alleged interference with Portionables's relationship with
4 Birdseye Foods, (3) Sargento's negotiations to resolve a contentious dispute with
5 Bellingham Cold Storage ("BCS", Portionables's landlord in Bellingham) regarding the
6 BCS lease and Calliari's plan to implement direct shipping from the BCS facility, (4) the
7 SAP software implementation process, and (5) various other demands and requirements
8 imposed by Sargento on Calliari and his Portionables management team, which Calliari
9 viewed as unreasonable.

10 6. When the mediation failed to result in an agreed resolution, Judge Sullivan
11 issued written recommendations on June 20, 2008. In his written recommendations, Judge
12 Sullivan concluded that all of Calliari's complaints about loss of operational control
13 lacked merit, and that Sargento's actions in that regard were fully justified under the
14 circumstances and consistent with the terms of the SPA and Calliari's Employment
15 Agreement. Judge Sullivan did not recommend that Sargento take any corrective action
16 toward Calliari.

17 7. In addition to the \$19 million in cash paid up front, the SPA provides that
18 the Shareholders may be entitled to additional compensation ("Contingent Payment") if
19 Portionables achieves a stated earnings threshold during the 20 months following the
20 closing. On March 12, 2009, Sargento sent the Contingent Payment Report to the
21 Shareholders notifying them that Sargento had determined that no Contingent Payment
22 was due under Section 1.5 of the SPA because Portionables did not meet the earnings
23 threshold.

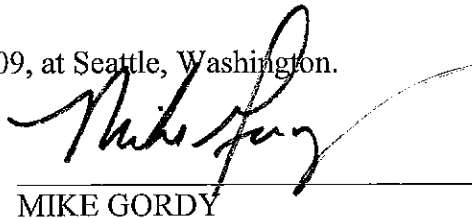
24 8. The production capacity of the Portionables, Inc. ("Portionables") plants in
25 Bellingham, Washington and North Sioux City, South Dakota were both important
26 considerations for Sargento in deciding whether to purchase Portionables from the

1 Shareholders and how much to pay for it. For a given set of sauce products, a plant that
 2 produces at a faster rate is more valuable and more desirable than a plant that produces at
 3 a slower rate.

4 9. The Shareholders have argued that it is unreasonable for Sargento to be
 5 claiming that the Shareholders warranted that the South Dakota plant and equipment was
 6 adequate to produce four times the volume that it had actually produced the year before
 7 the acquisition. But it is neither fair nor meaningful to compare the 9-million pound
 8 historical volume of the South Dakota plant to the 40-million pound represented capacity
 9 of that plant. The former is primarily a measure of past customer demand, while the latter
 10 is a measure of potential production (and therefore revenue generation) capability.
 11 Obviously, the latter is what Sargento was primarily evaluating when deciding whether to
 12 purchase the company and at what price.

13 10. In regard to the Chianti Cheese litigation, Betty Crouse received notice of
 14 the Bertolli/Unilever product recall in March 2006, when Unilever advised Portionables of
 15 the allergen contamination and sent Portionables a copy of its demand letter to Chianti
 16 Cheese. Twice in March 2006, an official from the United States Food and Drug
 17 Administration ("FDA") visited the Portionables plant in Bellingham, Washington to
 18 investigate the recall, interview various Portionables employees, and inspect related
 19 documents.

20 DATED this 10th day of August, 2009, at Seattle, Washington.

21 
 22 MIKE GORDY

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 DECLARATION OF MIKE GORDY (No. 2:08-CV-
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LAW OFFICES OF
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CERTIFICATE OF SERVICE

I certify that on August 10, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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DATED this 10th day of August, 2009.

By: s/ David A. Linehan
David A. Linehan, WSBA No. 34831

DECLARATION OF MIKE GORDY (No. 2:08-CV-1111MJP) – Page 5

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